10 Facts *to Rebut the Mythology of a Runaway Convention*

1 Article V does not authorize a constitutional convention; it authorizes a convention for proposing specific amendments.

2 When the Founders drafted the U.S. Constitution in 1787, they specifically rejected language for Article V that would have allowed the states to later call for an open convention.

3 Thirty eight (38) states must ratify any proposal from an amendments convention, requiring a broad consensus that makes sure an amendments convention cannot "runaway."

4 The limited scope of an amendments convention is underscored by the fact that it specifically says amendments cannot alter the equal number of votes for each state in the U.S. Senate without the consent of the affected state. This establishes that an Article V convention couldn't simply rewrite the entire Constitution.

5 The states define the agenda of an amendments convention through their applications for the convention and through the commission of delegates. Amendments conventions can be limited to specific topics.

6 The Constitution was sold by the Founders to the ratifying states on the basis that they retained their ultimate authority over the federal government through their Article V amendment powers. James Madison in Federalist No. 43 specifically argued that states should use the power to correct errors in the Constitution. And Alexander Hamilton in the "final argument" of the Federalist Papers, in Federalist No. 85, said the Article V amendment process was the means by which the states would rein in an out-of-control federal government. One cannot take the Constitution seriously and contend that Article V was not meant to be used. It is a critical and "deal closing" element of the balance of power created by the Constitution.

7 There is zero precedent that any convention of the states has ever "runaway" from its assigned agenda. There have been 12 interstate conventions in the history of our country. All of them stayed within their stated agenda. Even the Constitutional Convention of 1787 was not convened to "amend" the Articles of Confederation, but to "revise" and "alter" the Articles to establish an effective national government. This was fully consistent with the Articles of Confederation because the Articles authorized alterations – a term that had revolutionary significance because it echoed the language of the Declaration of Independence. The broad purpose of the Constitutional Convention of 1787 was specifically mentioned in the call of Congress and in nearly all of the commissions for the delegates for each state. The 1787 convention did not runaway at all; it did what it was charged to do – like all interstate conventions preceding it.

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8 The procedures for conducting an amendments convention are similar to Congress' long-established rulemaking powers. Constitutional text, language and custom make clear that Congress calls the convention, setting a time and location; states appoint delegates by way of resolutions and commissions (or general state law); delegates initially vote as states at the convention; and majority votes will decide what amendments are proposed for ratification. An amendments convention is simply an interstate task force.

9 The limited scope of an amendments convention is similar to that of state ratification conventions that are also authorized in Article V, but no one worries about a ratification convention "running away," even though such a convention does make law.

10 An amendments convention, because it only proposes amendments and does not make law, is not an effective vehicle for staging a government takeover.

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no more than 24 hours in duration. It also appoints all delegates for the signing states (their elected governors, who up until now had no role whatsoever in the Article V process), defines the convention rules, and prohibits any signing state from ratifying or participating in any convention that disregarded its state-assigned agenda. The contemplated counterpart congressional Omnibus Concurrent Resolution then "blesses" the Compact by calling the Article V convention in accordance with its terms, and further provides that the amendments contemplated by the Compact will be submitted immediately to the state legislatures for ratification, upon approval by the convention.

The critical legislative device used to accomplish this is that of the contingent prospective effective date; using this device, you can "nest" all of the necessary Article V legislation in just one piece of legislation for each state (the Compact) and one piece of legislation for Congress (the Omnibus Concurrent Resolution), allowing them to be triggered at the appropriate time with targeted effective dates. Our research shows that 44 states recognize the use of such contingent prospective effective dates, which are commonly known as "tie-barring" legislation. No state has rejected it.

As such, the Compact for America gives the states a more convenient and powerful vehicle to originate constitutional amendments than the ordinary Article V process. Even in its simplest form, the ordinary Article V process would require the passage of 100 pieces of legislation; including 98 pieces of state legislation (34 state applications, 26 delegate appointments, 38 ratifications) and 2 pieces of federal legislation (congressional call and ratification referral). By contrast, the Compact consolidates the entire Article V process into 39 pieces of legislation; specifically, 38 pieces of state legislation adopting the Compact and 1 piece of federal legislation (the Omnibus Concurrent Resolution). With appropriate funding of educational and lobbying efforts, a Balanced Budget Amendment could be on the books in one year or less.

The Compact also provides greater certainty about the likely course of events flowing from the state origination of constitutional amendments under Article V than the normal Article V process. The normal Article V process is subject to scholarly disputes over whether the states can set the agenda of the amendments convention, as well as whether the states or Congress have the power to appoint delegates, determine convention logistics and rules. Disputes also exist as to whether the convention is a sovereign body with the power to act independently of any agenda or rules set by the states or Congress. Regardless of which scholar is correct in these disputes, it is possible that a politicized court will latch on to one or the other, as needed, to reach a desired result in any challenge to the Article V process. This means the ordinary Article V process is vulnerable to considerable litigation risks at each of its various stages.

By contrast, the Compact is designed to resolve all of these scholarly disputes and minimize court meddling by providing a clear legal framework to govern the Article V process regardless of one's point of view on these issues. First, it locks down the convention agenda, delegate authority/identity, as well as convention logistics and rules as a matter of *both* state *and* federal law (modern precedent deems an interstate compact the equivalent of federal law when Congress consents to it). Second, even if the convention were deemed to have the power to act independently of state or federal law, the Compact prohibits three-fourths of the states from participating in the convention or ratifying any proposal made by the convention if the convention deviates from the agenda, delegate

POLICY report

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Amending the Constitution by Convention: A Complete View of the Founders' Plan

by Robert G. Natelson,[1] Senior Fellow, Goldwater Institute and Professor of Law at the University of Montana (Ret.)

EXECUTIVE SUMMARY

by Nick Dranias, the Goldwater Institute Clarence J. and Katherine P. Duncan chair for constitutional government and is the director of the Institute's Dorothy D. and Joseph A. Moller Center for Constitutional Government

Americans are increasingly questioning - and resisting - the endless growth of the federal government. Part of this resistance finds voice in efforts to enforce state sovereignty through litigation and legislation such as the Health Care Freedom Act and the Firearms Freedom Act. Measures such as these protect existing, fundamental rights from erosion at the federal level. But the growing discontent has also reignited interest in an even more direct route for the people and the states to regain control over the federal government - the Article V constitutional amendment process.

Under Article V of the U.S. Constitution, the states have the power to apply to Congress to hold a convention for the purpose of proposing constitutional amendments. This power was meant to provide a fail-safe mechanism to control the federal government.

This report demonstrates that the historical record during the Founding era establishes a clear roadmap to guide the Article V amendment process. Among other seminal discoveries, this report reveals that the Framers rejected drafts of Article V that contemplated the very kind of wide-open convention that could "run away," substituting instead a provision for a limited-scope convention, attended by state-chosen delegates, and addressed to specific subject matters.

Of course, abuses of the Article V constitutional amendment process are possible. But that possibility must be viewed against the clear and present danger to individual rights and freedom of doing nothing. This report recommends that states seriously consider initiating the Article V constitutional amendment process to restrain the federal government.

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The National Debt Relief Amendment

The Solution to the Federal Debt Crisis

"An increase in the federal debt requires approval from a majority of the legislatures of the separate states."

The National Debt Relief Amendment (NDRA) is a simple yet powerful 18-word amendment that will contain the growth in federal debt, lead to a balanced federal budget, rebuild federalism, create transparency, enforce budget discipline and expand democracy.

The National Debt Relief Amendment represents a common sense solution to the federal debt crisis that will make Congress accountable through a more transparent and politically open process before the national debt can be increased. The National Debt Relief Amendment requires approval from a majority of state legislatures to increase the national debt. This allows the American people to have a voice through the government closest to them, the state legislatures, before new debt is authorized. It is consistent with the separation of powers philosophy that guided our Founding Fathers and delivers on their vision of a government of the people, by the people, and for the people.

The NDRA delivers fiscal discipline. Congress will find it necessary to build realistic budgets based upon the honest scoring of bills. Congressional earmarks, war funding, and off-budget spending will require offset or new debt authorization by the states.

The NDRA allows Congress to request an increase in federal debt when necessary. The NDRA does not prevent our country from responding to a national crisis, still enabling states to respond quickly to an emergency.

The NDRA does not rely upon the courts for interpretation or enforcement. It would be practically impossible for the U.S. Treasury to sell bonds in the open market without state approval.

The NDRA provides an effective constraint to federal overreach. The states will have an effective tool to return the Federal Government to its limited role and release the states from federal mandates and unconstitutional intrusions upon their sovereignty.

The NDRA has been supported by state legislators and citizens from across the political spectrum and has been thoroughly researched and endorsed by the Goldwater Institute.

Congress will never propose an Amendment to the U.S. Constitution that limits its ability to borrow and spend money. A campaign for a state led Amendment process under Article V of the U.S. Constitution is underway. North Dakota and Louisiana have passed the NDRA, 22 states will be introducing the Amendment for consideration in their next sessions, and active discussions are underway with state legislators in many more.